**DANNY ANTHONY ANDIPAI** A

**v.**

**TAN SRI JOSEPH KURUP & ANOR**

HIGH COURT SABAH & SARAWAK, KOTA KINABALU B
DAVID WONG DAK WAH J
[ELECTION PETITION NO: K26-02-2008]
25 JUNE 2008

***ELECTION:*** *Petition - Application for declaration that election null and void - Preliminary objections to strike out petition - Whether petition defective - Whether statutory provisions complied with - Approach to construction of statutes - Whether alleged non-compliance of election laws affected result of election* C

***STATUTORY INTERPRETATION:*** *Construction of statutes - Purposive approach - Validity of election petition - Interpretation of election laws - Court's present approach to construing statutes* D

In the recently concluded General Election, the 1st respondent was returned unopposed on Nomination Day and, hence, the duly elected member of Parliament for the Parliament Constituency of P182 Pensiangan. The 2nd respondent made the declaration in view of the fact that the nominations of the petitioner and another candidate were rejected. The result of the election was subsequently gazetted on 19 March 2008. The petitioner was dissatisfied with the 2nd respondent's declaration and sought through this petition to have the election of the 1st respondent declared void for violations allegedly committed by the 2nd respondent against the Election Offences Act 1954 ('Act'), the Elections Act 1958 ('1958 Act') and the Election (Conduct of Elections) Regulations 1981 ('Regulations'). The 1st and/or 2nd respondents raised the following preliminary objections to strike out the petition: (i) the election petition was defective since it did not satisfy the mandatory requirements of r. 4(1)(b) of the Election Petition Rules 1954 ('Rules') read with s. 32(b) of the Act, as there were no facts or the facts were insufficient and no grounds were stated to sustain the prayer sought; (ii) the election petition was defective since it did not satisfy the mandatory requirement of r. 4(1)(b) of the Rules, as the "grounds" stated in para. 4 were not recognisable or were not the stipulated grounds to sustain the prayer sought; (iii) the election petition was defective since it did not comply with the mandatory requirement of r. 4(3) of the Rules E F G H I

A *ie*, the inclusion of the words "under s. 32(b) of the Act" in prayer 5(a) of the petition was not a prayer recognisable by r. 4(3) of the Rules; (iv) the election was defective since it did not satisfy the mandatory requirements of r. 4(1)(b) of the Rules read with reg. 7(5) of the Regulations and s. 32(b) of the Act; and (v) B the petitioner had failed to disclose how the alleged non-compliance of the relevant legislation would have affected the result of the election.

**Held (dismissing the preliminary objections):**

C **(1)** Rule 4(1)(b) of the Rules only requires the petitioner to briefly state the facts and grounds relied on to sustain his prayer. And if the respondents feel that the particulars are not adequate, r. 5 of the Rules provides that they are entitled to make an application to the court to order the production of D such particulars. The existence of r. 5 of the Rules shows the legislature's intention to allow some latitude to the petitioner in drafting the election petition. There is no valid reason to read r. 41(1)(b) of the Rules with s. 32 of the Act since the latter has no connection whatsoever to do with the procedure E and practice of filing an election petition. The test to be applied in such a situation is whether, after reading the petition in its totality, the respondents as reasonable people understand the complaints made by the petitioner and whether the complaints give rise to a cause of action. In this instance, F the petition could be easily understood. The petitioner had one complaint and that was that his nomination papers should not have been rejected after having been received by the Returning Officer and posted on the notice board for objection. By virtue of that rejection, there had been a breach G of the principles laid down by the election laws. Even if the respondents' contention were correct, the petition as it was framed had complied with the mandatory requirement. The petition had referred in ground (e) to the principles laid down under the 1958 Act and the Regulations. Also in prayer 5(a), H it referred to s. 32(b) of the Act. The provisions relied on could not be any clearer. The particulars of the alleged breach were fully set out in detail in the petition, which had disclosed a cause of action. That being the case, the petitioner had set out the brief facts adequately to sustain the prayer asked for. I (paras 13, 14, 22, 23, 24 & 25)

**(2)** In paras. 4(a) and (c) of the petition, the petitioner had relied on the principles of "legitimate expectation", "natural justice" and "fair play", which in the respondents' views were common law principles that were not recognised by election laws. With respect, the argument was misguided as the petitioner only relied on those principles to show how and why the 2nd respondent had breached the principles of election laws. Further, those principles were synonymous with principles of election laws. (para 26)

**(3)** The court's approach now in construing statutes is the purposive approach. All r. 4(3) of the Rules states is that there must be a prayer in the petition claiming 'that some specified person should be declared duly returned or elected, or that the election should be declared void'. It does not say that it must only contain those exact words. Prayer 5(a) contained such a prayer and the inclusion of the words "under s. 32(b) of the Act" did not change the meaning of the prayer. In fact, it clarified the pleadings and in any event it could not be seen how the respondent was prejudiced or misled by the prayer. (paras 29 & 34)

**(4)** For the same reason as in the 1st preliminary objection, the preliminary objection in (iv) ought to be dismissed. Although it was further argued by the 2nd respondent that the decision made by the returning officer was final and could not be challenged in court, that argument was premised on certain assumptions which had not been agreed upon by counsel. In other words, the facts were still in dispute and until that dispute was resolved, it was premature to deal with this submission by the 2nd respondent. (paras 37 & 38)

**(5)** Preliminary objection (v) was without any merit for two reasons. Firstly, there was no such requirement by the law. Secondly, if one looked at the petition in its totality, it was quite plain for all to see that the alleged non-compliance of the election laws by the 2nd respondent would definitely affect the result of the election as the petitioner was prevented from standing in the election. (para 39)

**Case(s) referred to:**

*Chiew Chiu Sing v. Datuk Celestine Ujang ak Jilan & Ors [1997] 1 LNS 502* ***(refd)***

*Dato' Ismail Kamus v. Pegawai Pengurus Pilihanraya (Zainal Abidin Azim) & Ors [2005] 2 CLJ 237 FC* ***(dist)***

*Dr Shafie Abu Bakar v. Pegawai Pengurus Pilihanraya N26 Bangi & Ors and Other Petitioners [2005] 5 CLJ 349 HC* ***(refd)***

*Gan Joon Zin v. Fong Kui Lun & Ors [2004] 4 CLJ 729 FC* ***(dist)***

*Gan Joon Zin v. Fong Kui Lun & Ors [2004] 5 AMR 750* ***(refd)***

*Jaafar Mustaffa Awang Mat v. Puan Shahrizhat Abdul Jalil [1995] 1 LNS 277* ***(refd)***

*Megat Najmuddin Dato Seri (Dr) Megat Khas v. Bank Bumiputra (M) Bhd [2002] 1 CLJ 645; [2002] JT(2) FC* ***(refd)***

*Morgan v. Simpson [1974] 3 All ER 722* ***(refd)***

*Muip Tabib v. Dato' James Wong [1970] 1 LNS 83* ***(refd)***

*Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC* ***(refd)***

*Patau Rubis v. Patrick Uren & Anor [1984] 1 CLJ 51; [1984] 2 CLJ (Rep) 348 HC* ***(refd)***

*Ruhimin Adzim Ajim v. Tan Sri Bernard Dompok & Anor [2004] 1 LNS 461* ***(refd)***

*United Malayan Banking Corp Bhd v. Ernest Cheong Yong Yin [2001] 2 CLJ 31 CA* ***(refd)***

*Wan Daud Wan Jusoh v. Mohd Hj Ali [1998] 2 MLJ 384* ***(refd)***

**Legislation referred to:**

Courts of Judicature Act 1964, s. 17

Election Offences Act 1954, ss. 5, 32(b), 35, 36A, 42(2)

Elections (Conduct of Elections) Regulations 1981, reg. 7(5)

Election Petition Rules 1954, rr. 4(1)(b), (2), (3), (4), 5

Interpretation Acts 1948 and 1967, s. 17A

Representation of the People Act 1949 [Eng], s. 37(1)

*For the petitioner - Ansari Abdullah (Datuk Chau Chin Tang with him); M/s Ansari & Co*

*For the 1st respondent - Alex Decena (Mariati Robert & Wilson Lai with him); M/s Jayasuriya Kah & Co*

*For the 2nd respondent - Azizah Nawawi SFC (Amarjeet Singh SFC with her)*

*Reported by Suresh Nathan*

## JUDGMENT

**David Wong Dak Wah J:**

### Introduction

**[1]** In the recently concluded General Election, the 1st respondent Tan Sri Joseph Kurup was returned unopposed on Nomination Day – 24 February 2008 and hence the duly elected Member of Parliament for the Parliament Constituency of P182 Pensiangan. The declaration was made by the 2nd respondent in view of the fact that the nominations of the petitioner and Saineh bin Unsau (the Independent Candidate for the same Constituency) were rejected. The result of the election was gazetted on 19 March 2008 under P.U. (B) 136.

**[2]** The petitioner was not satisfied with the declaration of the 2nd respondent and now seeks through this petition filed on 9 April 2008 to have the election of the 1st respondent declared void for violations allegedly committed by the 2nd respondent against the Election Offences Act 1954 (the Act) and the Elections (Conduct of Elections) Regulations 1981.

### Preliminary Objections

**[3]** As in all election petitions, preliminary objections are raised by respondents to strike out the petitions and it is no different here. Both the respondents at the mention hearing on 28 May 2008 gave notice that they will be applying to strike out the petition on preliminary objections.

**[4]** However before I deal with the objections, let me associate myself with what Clement Skinner J said in the case of *Ruhimin Adzim @ Ruhimin bin Ajim v. Tan Sri Bernard Dompok & Anor* [2004] 1 LNS 461 as follows:

> It was first said that in hearing this interlocutory application, although I exercise jurisdiction as an Election Judge, I have not abdicated my powers as a High Court Judge and can exercise original jurisdiction including that vested in the court by the Rules of the High Court, so that I should be prepared to exercise the powers to forgive and cure defects in the proceedings before me as allowed by the Rules of the High Court.

**[5]** That statement is reflected in s. 42(2) of the Election Offences Act which provides as follows:

A When any matter is not expressly provided for in the Election Petition Rules 1954, the Rules of the High Court 1980 shall apply.

**[6]** The preliminary objections can be summarized as follows:

B (A) That the election petition should be dismissed on the ground that it is defective as it does not satisfy the mandatory requirements of r. 4(1)(b) Election Petition Rules 1954 read with s. 32(b) Election Offences Act 1954 as there are no facts or the facts are insufficient and no grounds are stated to C sustain the prayer sought. (Raised by both respondents)

**[7]** The crux of the respondents' contention is that the petitioner must in his petition narrate the facts complained of and associate those complaints with specific provisions of the Election D Offences Act, Elections Act or Election (Conduct of Elections) Regulations 1981. And failure to do so will render the petition void.

**[8]** Having read the cases submitted by respective counsels, it E appears that there are two schools of thoughts on this issue. One I call the strict compliance approach, the other the liberal approach. In support of the strict compliance approach, we have the following cases:

1. *Muip bin Tabib v. Dato' James Wong* [1970] 1 LNS 83 Justice F B.T.H. Lee said at p. 247 of his judgment:

> In my view paragraph 2 of the petition does not constitute grounds within paragraph (b) of section 32. To show that the returning officer was guilty of "non-compliance with the provisions of any written law relating to any election ..." it G is I think necessary for the petitioner's to refer to the specific written law. In neither of the petitions has any reference been made to such written law.

2. *Wan Daud bin Wan Jusoh v. Mohd bin Haji Ali* [1998] 2 MLJ H 384 Wan Yahya J said at p. 388/F/left;

> Para (b) of Rule 4(1) of the EPR enacts in peremptory language that the petition shall state the facts and grounds relied on to sustain the prayers. This requirement is further repeated under para (3) of the specimen form shown in I subrule (4). A petition under Rule 4 therefore must not only narrate the facts complained of but must relate to associate the complaints with the provision of election laws the respondent is alleged to have transgressed.

3. *Dr Shafie Abu Bakar v. Pegawai Pengurus Pilihanraya N26 Bangi & Ors and Other Petitioners* [2005] 5 CLJ 349, VT Singham J said at p. 385: A

> On going through the entire Election Laws, I am of the view that mere transgressions of the Election Laws does not necessarily affect the result of the election. The petitioner has to proceed one step further and comply with the mandatory statutory requirement and demonstrate how the transgression of the Election Laws as alleged has affected the result of the election and this has been the view on the Election Laws which generally have been recognized and acted upon by election judges who have dealt with election petitions. In the instant case, the petitioners have failed to demonstrate how the transgressions of the Election Laws as alleged has affected the result of the election. B C
>
> For reasons aforesaid, I allowed the preliminary objection and accordingly I dismissed all the three petitions. D

4. In *Gan Joon Zin v. Fong Kui Lun & 2 Ors* [2004] 5 AMR 750 Justice Low Hop Bing upheld the same principle and said at p. 767: E

> Upon the proper perusal of these four grounds, it is my specific finding that none of these grounds had ever stated the particular provision of section 32 which the petitioner had relied to avoid the election. This omission is fatal.

**[9]** Cases which support the liberal approach are as follows: F

1. *Jaafar Mustaffa b Awang Mamat v. Puan Shahrizhat @ Shahrizat bt Abdul Jalil* (High Court Kuala Lumpur-Election Petition No 2/95) Dato'Ahmad Fairuz bin Dato' Sheikh Abd Halim J (as he then was) held that "It is trite law that pleadings should not contain law. In view of the details of the alleged corrupt practices as enumerated in the petition, the court finds that the failure of the petitioner to mention sub-section 32 of the Election Offences Act 1954 is not fatal to the petition. G

2. *Patau Rubis v. Patrick Uren & Anor* [1984] 1 CLJ 51; [1984] 2 CLJ (Rep) 348 where Charles Ho J made the following comments: H

> If it is otherwise clear from the petition which relief or reliefs set out in s. 32 of the Act are being relied upon by the petitioner I do not think failing merely to state the specific section of the law would have serious legal consequences. What is important is that it must be clear on I

A the face of the petition what relief is being sought and the petition discloses a cause of action. It is well settled that failure to comply with the mandatory provisions of the Act or Rules would render the petition defective (see *Devan Nair*'s case and *Muip bin Tabib*'s case). As regards
B r. 4(1)(b) I am of the opinion that as the word 'shall' has been used throughout it is mandatory. The use of the word 'briefly' instead of the word 'concisely' as in the Indian legislation would not affect the mandatory nature of its provisions.

C **[10]** The cases which I refer to are of course not binding on this court as they were decisions of Election Courts. However counsels for both respondents had referred me to two Federal Court judgments and submitted that the *dicta* stated there are binding on me. These two cases are: *Dato' Ismail Kamus v.*
D *Pegawai Pengurus Pilihanraya (Zainal Abidin Azim) & Ors* [2005] 2 CLJ 237 *(Dato' Kamus)* and *Gan Joon Zin v. Fong Kui Lun & Ors* [2004] 4 CLJ 729 (*Gan*'s case). I have read the two cases and in my view they are not binding on me and my reasons are as follows:

E (i) The issue in *Dato' Kamus*'s case bears no resemblance to the issue here. In the present case we are dealing with preliminary objections while in that case the Federal Court was hearing an appeal against the decision of an election court after a full trial.
F The legal issue in that case involved the interpretation of s. 32(b) Election Offences Act. It was submitted by the appellant there that the Federal Court should interpret s. 32(b) Election Offences Act in the manner as Lord Denning did in interpreting s. 37(1) Representation of the People Act 1949 of England in the case of
G *Morgan v. Simpson* [1974] 3 All ER 722 and that is to declare the election void even if it can't be proved that the irregularities affected the outcome of the election. The Federal Court rejected that submission on the ground that s. 32 Election Offences Act clearly places the burden on the appellant to prove two ingredients
H and they are that there had been non compliance with the provisions of the written law relating to the conduct of the election and the said non compliance had affected the result of the elections. I concur with the decision of the Federal Court but it has no relevance to our issue at hand.

I (ii) As for *Gan*'s case *(supra)*, both counsels place heavy emphasis on the fact that the Federal Court, through the judgment of the present Chief Justice of the Federal Court, Tun Abdul Hamid

Mohamad, upheld the judgment of the Election Court where the election petition was struck out on a preliminary objection similar to that put forth by the respondents here. With respect, the counsels' reliance is misplaced and I say that for this reason. In *Gan*'s case the issue was whether the appellant there had any *locus standi* to maintain an appeal under s. 36A of the Election Offences Act. The Federal Court held the appellant had no standing on the ground that s. 36A only allows appeal against issues decided at the conclusion of the trial of the petition and decisions on preliminary objections are not issues decided at the conclusion of the trial of the petition. Once the Federal Court decided that the appellant had no *locus standi* any remarks thereafter on the appeal are *obiter dicta* and hence not binding on me. However in any event I do not think that the Federal Court in concurring with the Election Judge helps the respondents as the learned present Chief Justice said this:

> We have no reason to disagree with the learned judge on the facts of this case. However, in our view, whether or not insufficient particulars may warrant the striking out of an election petition depends on the seriousness of the omission and the consequential effects on the petition. It is to be decided according to the peculiar circumstances of each case.

**[11]** From that passage, one can see that the learned Chief Justice in fact places importance on the seriousness of the omission and each case must be decided based on its peculiar circumstances.

**[12]** The question which confronts me is which school of thought I should follow. Having read the submissions of respective counsels and the cases cited, I have no hesitation in finding that the respondents' contention to be without merits and my reasons are these:

The two relevant sections provide as follows:

> **Rule 4. Contents and form of election petition.**
>
> (1) An election petition shall contain the following statements:
>
> (a) it shall state the right of the petitioner to petition within section 34 of the Act; and
>
> (b) it shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

(2) The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed for drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the Court or Judge.

(3) The petition shall conclude with a prayer as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, and shall be signed by all the petitioners.

(4) The following form, or one to the like effect, shall be sufficient:

IN THE HIGH COURT OF ...

THE ELECTION OFFENCES ACT 1954

Election for ... (state the constituency or electoral ward) holden on the ... day of ... 19 ....

The petition of A., of ... (or of A., of ... and B., of ..., as the case may be) whose names are subscribed.

(1) Your petitioner A. is a person who voted (or had a right to vote, as the case may be) at the above election (or claims to have had a right to be returned at the above election or was a candidate at the above election), and your petitioner B. (here state in like manner the right of each petitioner);

(2) And your petitioners state that the election was holden on the ... day of ... 19 ... when A.B., C.D., and E.F. were candidates, and the Returning Officer has returned A.B. as being duly elected.

(3) And your petitioners say that (here state the concise facts and grounds on which the petitioners rely)

Where for your petitioners pray that it might be determined that the said A.B. was not duly elected or returned, and that the election was void (or that the said E.F. was duly elected and ought to have been returned).

...

(Signed) A B

**Rule 5. Evidence not to be stated in petition but particulars may be ordered.**

Evidence need not be stated in the petition, but the Judge may, upon application in writing by a respondent, order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial upon such terms as to costs and otherwise as may be ordered.

Section 32(b) reads as follows:

**32. Avoidance of election on election petition.**

The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:

(a) that general bribery, general treating or general intimidation have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;

(b) non-compliance with the provisions of any written law relating to the conduct of any election if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such noncompliance affected the result of the election;

(c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate;

(d) that the candidate personally engaged a person as his election agent, or as a canvasser or agent, knowing that such person had within seven years previous to such engagement been convicted or found guilty of a corrupt practice by a Sessions Court, or by the report of an Election Judge; or

(e) that the candidate was at the time of his election a person disqualified for election.

**[13]** Section 42 of the Election Offenses Act specifically provides that the procedure and practice on election petitions shall be regulated by the Election Petition Rules 1954 as set out in the Second Schedule. Hence whether there is such a mandatory

requirement as contended by the respondents can only be gathered from the rules themselves. I have read the Rules several times with utmost care and I cannot find any words which resemble the respondents' contention. Rule 4(1)(b) only requires the petitioner to briefly state the facts and grounds relied on to sustain his prayer. And if the respondents feel that the particulars are not adequate, r. 5 provides that they are entitled to make an application to the court to order the production of such particulars. The existence of r. 5 shows the legislature's intention to allow some latitude to the petitioner or his or her legal advisers in drafting the election petition.

**[14]** I have read the judgments cited to me in support of the respondents' case with care and with respect I cannot find the basis on which their Lordships reached the conclusion that r. 4(1)(b) read together with s. 32 of the Election Offences Act 1954 mandatorily requires the petitioner to associate his allegations to a specific written law. In my view there is no valid reason to read r. 4(1)(b) with s. 32 of the Election Offences Act as the latter has no connection whatsoever to do with the procedure and practice of filing an election petition. And if one reads s. 32, one can see that no such mandatory requirement can be found.

**[15]** I find support for my view in the judgment of Clement Skinner J in *Ruhimin Adzim @ Ruhimin bin Ajim v. Tan Sri Bernard Dompok & Anor* [2004] 1 LNS 461 where he dealt with a similar objection and held as follows:

> The fifth objection is that the petitioner failed to comply with rule 4(1)(b) of the Rules read together with s. 32(b) of the Act, in that, the petitioner failed to state how the non-compliance of the provisions of the written law relating to the conduct of the election has affected the result of the same.
>
> I regret to say that I find no merit in this objection and have no hesitation rejecting it.
>
> In the first place nowhere in rule 4(1)(b) is it stated that the petitioner must state how the non-compliance has affected the result of the election. In the second place, I can see nothing in s. 32(b) of the Act which even suggests that the petitioner must state how the non-compliance with the provisions of any written law relating to the conduct of the election affected the result of the same. The onus which s 32(b) places on a petitioner is to prove to the satisfaction of the Election Judge the several matters stated there, and not to plead how the non-compliance with

written law relating to the conduct of the election has affected the result of the same, as contended by learned Senior Federal Counsel. In this regard I agree with counsel for the petitioner that **s. 32(b) is an empowering provision and not a procedural section**. (emphasis added)

**[16]** In my view in determining whether to adopt a strict observance or a liberal approach in election laws, one must not only look at just 'preventing injustice to the defending candidate', it must also take the following considerations:

1. The constitutional right of a qualified citizen to contest in an election;

2. The constitutional rights of the people of the country to choose a qualified candidate in an election once every five years;

3. The constitutional rights of the people of the country to have a fair and clean election (see Alauddin Mohd Shariff FCJ (as he then was, now CJM) in *Dato' Ismail Kamus v. Pegawai Pengurus Pilihanraya (supra)* at p. 243 on the need to adhere to the "overriding principles of democracy and the need to protect the purity of the election process"; and

4. The constitutional rights of "access to justice" by the citizens.

**[17]** The above rights must always be guarded jealously by the courts. In my view if a 'strict observance' approach is adopted by the courts, those rights will definitely be diluted. Take the case of the right of access to justice. If a 'strict observance approach' is adopted, no citizen will be able to act for himself or herself to file an election petition because surely as night follows day the petition would be knocked out by preliminary objections. Further if the respondents' contention is sustained, the petitioner will have to go through the relevant provisions of the Election Act, Election Offences Act or Election (Conduct of Elections) Regulations 1981 with a fine tooth comb and put the relevant provision in the petition. That would be a task which a petitioner will not be able to fulfil. I say that for the simple reason that day in day out in our courts, judges, Sessions Court Judges or Magistrates have seen it fit to amend charges in criminal cases when they held that the charge had been wrongly framed by the prosecution. In those criminal cases, the charges are drafted by qualified lawyers and yet they had been found to be wrong. So in election cases, what chance does a person who wants to file an election petition

himself or herself have? My answer would be next to none and that would in my view make the constitutional right of access of justice an illusionary one. The remedies of law should be accessible to the ordinary people and laws should not be interpreted in such a manner that only rocket scientist can access remedies in the law as that cannot ever be the intention of Parliament.

**[18]** It is said that rights to petition from the Election Offences Act is a special kind of right unknown to the common law or equity and hence should be applied strictly. I must confess that I don't understand the logic of that argument. In my view the Election Petition Rules are no different to say the High Court Rules which is also a creature of a statute re s. 17 of the Courts of Judicature Act. The courts have seen it fit to adopt a common sense approach in interpreting the High Court Rules. In the often quoted case of *United Malayan Banking Corp Berhad v. Ernest Cheong Yong Yin* [2001] 2 CLJ 31 where Ahmad Fairuz JCA (as he then was) said:

> Our Federal Court in the case of *Tan Chwee Geok & Anor v. Khaw Yen-Yen & Anor* [1975] 1 LNS 178 said:
>
> > The Rules of the Supreme Court **are intended to facilitate, not impede, the administration of civil justice.**
> >
> > In the bad old days in England from where we took our Rules, if you put a comma wrong you were thrown out of court, so strict were they about technicalities.
> >
> > But over the years this strictness gave way to common sense, and every time the Rules were amended it was with the object of removing fussy technicalities, and making it easier for parties to get justice.
> >
> > This changed attitude was reflected in the remarks of Lord Collins MR about 70 years ago in *Re Coles and Ravenshear* [1907] 1 KB 1:
> >
> > > Although a court cannot conduct its business without a code of procedure, the relation of the rules of practice to the work of justice is intended to be that of handmaid rather than mistress; and the court ought not to be so far bound and tied by rules, which are after all only intended as general rules of procedure, as to be compelled to do what will cause injustice in the particular case. (emphasis added.)

And in the same case, Ali FJ, said (at p. 192):

> The general principle, I think, is that rights of parties in an action are not to be defeated by technical objections.

In this connection, we would also like to quote what this court had said in *Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd* [1995] 4 CLJ 283, at p 293, ie:

> … After all, courts exist to do justice according to the law as applied **to the substantial merits of a particular case** … (emphasis added.)

Kaikaus J, in *Imtiaz Ahmad v. Ghulam Ali PLD* [1963] SC 382 at p. 400 said:

> **Any system** which by giving effect to the form and not to the substance **defeats substantive rights is defective to that extent.** The ideal must always be a system that gives to every person what is his. (emphasis added.)

Bearing in mind the abovementioned authorities, I feel that the preliminary objection should not be allowed. The objection is indeed on a mere technicality.

**[19]** See also the case of *Megat Najmuddin bin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra (M) Bhd* [2002] 1 CLJ 645; [2002] JT(2).

**[20]** In *Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265, the Federal Court in dealing with the long held view that tax statutes should be construed strictly found that there was no credible reason to hold that view and any interpretation of statutes should be guided by the principle set out in s. 17A of the Interpretation Acts which embodies the "purposive approach".

**[21]** I see no reason why such approach should not be adopted in the interpretation of election law.

**[22]** Reverting back to the objection at hand, the test which I would apply is to ask myself this question:

> Whether, after reading the petition in its totality, the Respondents as reasonable people understand the complaints made by the Petitioner and whether the complaints give rise to a cause of action?

**[23]** In fact I asked the respondents' counsels this very question and they both answered in the affirmative but however to be fair to them they contended that is not the test in election cases. As far as I am concerned that is the test and applying that test I have no hesitation to conclude that the petition can be easily understood. The petitioner has one complaint and that is his nomination papers should not have been rejected after having been received by the returning officer and posted on the notice board for objection. By virtue of that rejection, there had been a breach of the principles laid down by the election laws. In the case of *Chiew Chiu Sing v. Datuk Celestine Ujang ak Jilan & Ors* (Bintulu Election Petition No 26-01-1996) cited by the counsel for the petitioner, the learned judge adopted the same approach and this can be seen from his pronouncement:

> With respect, I may agree with the Senior Federal Counsel and with Yang Mulia Raja Aziz Addruce that the election petition now before me could have been better drafted. But I do not think it is so defective, so unintelligible, so devoid of clarity, so general in terms that it would attract the chastisement for "defective drafting" in *Muip* page 253 or that the respondents would not understand petitioner's complaint, petitioner's charge against respondents and the ground relied on by petitioner.

**[24]** Even if I am wrong in what I have stated above and the respondents' contention is correct, I also find that the petition as it is framed had complied with the mandatory requirement. The petition had referred in Grounds (e) to "the principles laid down under the Elections Act 1958 and the Elections (Conduct of Elections) Regulations 1981". Also in prayer 5(a), it refers to s. 32(b) of the Election Offences Act. The provisions relied on cannot be any clearer. The particulars of the alleged breach are fully set out in detail in the petition which in my view had disclosed a cause of action.

**[25]** That being the case, it is my judgment that the petitioner had set out the brief facts adequately to sustain the prayer asked for.

(B) The election petition is defective as it does not satisfy the mandatory requirement of Rule 4(1)(b) Election Petition Rules 1954 as the "grounds" stated in paragraph 4 are not recognizable or are not the stipulated grounds to sustain the prayer sought. (Raised by both counsels for the Respondents)

**[26]** In paras 4(a) and (c) of the petition, the petitioner had relied on principles of "legitimate expectation", "natural justice" and "fair play", which in the views of the respondents are common law principles which are not recognized by election laws. With respect the argument is misguided as the petitioner only relied on those principles to show how and why the 2nd respondent had breached the principles of election laws. In any event if those principles are not synonymous to principles of election laws, I don't know what are.

(C) The election petition is defective as it does not comply with the mandatory requirement of Rule 4(3) Election Petition Rules 1954. (Raised by the 2nd Respondent)

**[27]** On this ground this is what the learned Senior Federal Counsel (SFC), Puan Azizah Nawawi contended:

6.2 Rule 4(3) provide:

> The petition ***shall*** conclude with a prayer as, *for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void,* and shall be signed by all the petitioners.

6.3 It is respectfully submitted that the petition is defective or a nullity for failure to comply with r. 4(3) as it does not conclude with a proper prayer or that it concludes with a prayer unknown to the Election Offences Act 1954.

6.4 It is submitted that the prayers that can specifically be claimed in an election petition are provided in *s. 35 of the Act.* Failure to claim any or all of the prayers set out in this section will render the petition defective for non-compliance with the mandatory strict requirements of r. 4 of the Rules. The only prayers in an election petition as set out by s. 35 of Act 5 are:

(a) a declaration that the election is void;

(b) a declaration that the person was not duly elected or ought not to have been returned;

A (c) (deleted by Act A1177)

(d) where the seat is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes, a scrutiny.

B 6.5 In *Yong Kuan Teik v. Devan Nair* [1965] 1 LNS 206, the Federal Court stated that:

The law in this country relating to election petition is contained in Part VII of the Election Offences Ordinance,
C 1954, and the Election Petition Rules, 1954.

The reliefs which may be claimed are set out in section 35. These are declarations that the election in question is void, that a person returned should not have been returned or
D that a candidate not returned should have been returned and a scrutiny of votes. By section 36 the Election Judge is required to determine the questions raised in the petition …

E 6.6 However the Petitioner in his petition concluded with the following prayer – *"that the election of the 1st Respondent be declared null and void under section 32(b) of the Election Offences Act 1954". Section 32(b)* is *not a prayer* that is recognized by the said Act but is *a ground for avoiding an*
F *election* – a ground that must be proved to the satisfaction of the Election Judge before the judge can make a determination under s 36(1) of the reliefs that can be claimed in an election petition as provided by *s. 35 of the Act.* Therefore a 'ground' is the tool necessary to obtain
G the result 'prayed' for. The 'ground' cannot be the 'prayer' at the same time. *It is submitted that relying on the wrong provision of law is fatal as it renders the petition defective for non-compliance with rule 4(3) of the Rules read with s. 5 of the Act. On this ground alone the petition ought to be struck out.*

H **[28]** With respect, I disagree with her contention and my reasons are these. The contention of the learned SFC is premised on the literal approach to construing statutes. Lord Scarman in the 1980 Ninth Wilfred Fullagar Memorial Lecture, delivered at Monash University ((1980) 7 Monash Law Review p. 6) said this:

I

> … when I, an English judge, read some of the decisions of the High Court of Australia, I think they are more English than the English. In London no-one would now dare to choose the literal rather a purposive construction of a statute: and 'legalism' is currently a term of abuse.

**[29]** Though our system of law is derived from the English, there is no reason why we should be more English than them and I am glad to say that our judges have not gone down that path. The court's approach now in construing statues is the purposive approach. This can be seen from the case of *Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265 where Steve Shim CJSS said:

> Now, the Court of Appeal, in the present case, had expressly held that the provisions of a taxing statute should be construed strictly without regard to the purpose, object or intent of the statute, relying, quite obviously, on the Supreme Court case of *National Land-Finance Co-operative v. Director- General of Inland Revenue* [1993] 4 CLJ 339 when Gunn Chit Tuan CJ (Malaya) said:
>
> > There are ample authorities to show that the Courts have refused to adopt a construction of a taxing statute which would impose liability when doubt exists. In *Re Micklewait*, it was held that a subject was not to be taxed without clear words. We realize that revenue from taxation is essential to enable the Government to administer the country and that Courts should help in the collection of taxes whilst remaining fair to tax payers. Nevertheless, we should remind ourselves of the principle of strict interpretation as stated by Rowlatt, J in *Cape Brandy Syndicate v. Inland Revenue Commissioners* … It has been said by the Judicial Committee in *Oriental Bank Corp v. Wright* that the intention to impose a charge upon a subject must be shown by clear and unambiguous language …
>
> With respect, the principle of strict interpretation of statutes enunciated by Rowlatt, J could not be regarded as the *locus classicus* on the issue. Indeed as long ago as 1899, Lord Russell of Killowen CJ took a different approach in *AG v. Carlton Bank* [1899] 2 QB 158, when he said *inter alia*:
>
> > I see no reason why special canons of construction should be applied to any Act of Parliament and I know of no authority for saying that a taxing Act is to be construed differently from any other Act. The duty of a court is, in my opinion, in all cases the same; whether the Act to be construed relates to taxation or any other subject, *viz* to give effect to the intention of the legislature …

In *Luke v. IRC* [1963] AC 557, Lord Reid in the House of Lords, echoed similar views. And much later, Lord Wilberforce expanded the principle in *W.T. Ramsay Ltd. v. Inland Revenue Commission* [1982] AC 300 when he said as follows:

> A subject is only to be taxed on clear words, not on 'intendment' or on the 'equity' of an Act ... What are 'clear words' is to be ascertained on normal principles; these do not confine the courts to literal interpretation. They may, indeed should, be considered in the context and scheme of the relevant Act as a whole, and its purpose may, indeed should, be regarded ...

This is known as the Ramsay Principle. While clear words are needed before a tax can be imposed, what those words are would be interpreted in line with the purposive approach. Undoubtedly, in the United Kingdom, there is currently a more pronounced shift from the strict literal interpretation of a taxing statute. The Ramsay Principle of statutory interpretation seems to have entrenched itself; (see *Pepper v. Hart* [1993] AC 593). In Malaysia, that principle should apply and it must be applied in consonance with s. 17A of the Interpretation Acts 1948/1967 which stipulates:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object

It is pertinent to note that s. 17A was a recent amendment under the Interpretation (Amendment) Act 1997 (Act A996) and became effective on 25 July 1997. This would be after the *National Land Finance Co-operative (supra)*. In my view, the law is now clear beyond doubt. Section 17A above enjoins the purposive approach to statutory interpretation. **This applies to all statutes including taxing statues.** (emphasis added)

**[30]** No authority has been cited to me by the learned SFC why I should not follow the purposive approach in interpreting the Election Offence Act. As pointed by the learned Chief Judge of Sabah and Sarawak, s. 17A of the Interpretation Act applies to all statutes.

**[31]** The Australian Courts of course now have moved away from the literal approach.

**[32]** I now apply the above principle to the Election Offences Act in particular to r. 4(3) and s. 35. The learned SFC contends that the only prayers recognized by s. 35 are those listed and if any of the prayers in the petition is not included the petition is defective and ought to be struck out. If that argument is taken to its natural conclusion, it would mean no petitioner in an Election Petition is entitled to ask for "costs" as in this case because it is a not a claim recognizable by s. 35 of the Election Offences Act. That of course cannot be correct as it defies common sense.

**[33]** As for the inclusion of the words "under s. 32(b) of the Election Offences Act 1954" in prayer 5(a), the learned SFC also submitted it is not a prayer recognizable by r. 4(3) and hence the petition ought to be struck out. In interpreting the words in r. 4(3), I must not look at them in isolation divorced from its context as demanded by the principles stated earlier by me. The purpose of r. 4(1), (2), (3) and (4) is plain and obvious and that is to give guidelines to the petitioner in the framing of the petition. Nowhere does any of the section states that compliance of the rules is to be strictly complied with and any failure would render the election petition void. In fact r. 4(2) states that if there is no substantial compliance with that rule the petitioner shall be punished with costs only. Again we see in r. 4(4) which states that 'the following form, or one to the like effect, shall be sufficient'. The wordings there speak for themselves.

**[34]** Coming back to r. 4(3), in my view all it states is that there must be a prayer in the petition claiming 'that some specified person should be declared duly returned or elected, or that the election should be declared void'. It does not say that it must only contain those exact words. Prayer 5(a) contains such a prayer and the inclusion of the words "under s. 32(b) of the Election Offences Act 1954" does not change the meaning of the prayer. In fact it clarifies the pleadings and in any event I cannot see how the respondent is prejudiced or misled by the prayer.

**[35]** For reasons stated, I dismiss this preliminary objection.

(D) The election petition is defective as it does not satisfy the mandatory requirements of rule 4(1)(b) of the Rules read with regulation 7(5) of the Elections (Conduct of Election) Regulations 1981 and section 32(b) of Act 5. (Raised by the 2nd Respondent)

**[36]** Regulation 7(5) states:

> **7. Objection to nomination papers.**
>
> (5) The decision of the returning officer shall be final and conclusive for the purpose of the election in respect of which the proceedings are being held, and shall not be called in question in any court:
>
> Provided that any person aggrieved by the decision of the returning officer may present an election petition in respect thereof on the grounds set out in paragraph (b) of section 32 of the Election Offences Act 1954, and the provisions of the said Act shall take effect accordingly.

**[37]** Mr. Amarjeet Singh submits the same argument as in the 1st preliminary objection in that the petition should have referred to reg. 7(5) and failure to do so renders the petition defective. For the same reason as in the 1st preliminary objection, I dismiss this preliminary objection. It is noteworthy here that Mr. Ansari contends that reg. 7(5) of the Elections (Conduct of Election) Regulations 1981 has no relevance to the case at hand. The fact that we have two senior lawyers of the Bar holding different opinion on the relevance of this regulation affirms my view that there is no way that a petitioner acting on behalf of himself or herself can associate the correct provision of the law to the alleged brief facts.

**[38]** Mr. Amarjeet Singh however, further in his oral argument, argued that the decision made by the returning officer is final and cannot be challenged in court. That argument is premised on certain assumptions which have not been agreed by counsels. In other words the facts are still in dispute and until that dispute is resolved it is premature to deal with this submission by the learned SFC.

> (E) The Petitioner had failed to disclose how the alleged non-compliance of Election Act 1958 and the Elections (Conduct of Elections) Regulations 1981 would have affected the result of the Election. (raised by the 1st Respondent)

**[39]** With respect I find this objection to be without any merit for two reasons. Firstly there is no such requirement by the law. (See Skinner J in *Ruhimin Adzim @ Ruhimin bin Ajim v. Tan Sri Bernard Dompok & Anor (supra)*). Secondly if one looks at the

petition in its totality, it is quite plain for all to see that the alleged non compliance of the election law by the 2nd respondent would definitely affect the result of the election as the petitioner was prevented from standing in the election.

**[40]** Mr. Decena also argued that Ground (e) of the petition is defective as it refers to an Act which does not exist. Ground (e) states as follows:

> By reason of the above said matters the above election was not conducted in accordance with the principles laid down under the **Election Act, 1958** and the Elections (Conduct of Elections) Regulations, 1981 and that such non-compliance had affected the result of the above election.

**[41]** This is how Mr. Decena puts the argument:

The Elections Act 1958 exists but not "Election Act 1958" as pleaded. For this reason, the 1st respondent further submits that Ground 4(e) is defective in that it refers to an act which does not exist. Thus, the pleading failed to comply with the mandatory requirements of s. 32(b).

**[42]** What was not said by Mr. Decena is how the 1st respondent had been prejudiced by this spelling mistake. The reason is obvious and that is the omission of the alphabet "s" is a mere typo error and the 1st respondent had not been prejudiced. That being the case I dismiss this preliminary objection.

## Conclusion

**[43]** For all the reasons stated above, the preliminary objections of the 1st and 2nd respondents are dismissed with costs to be taxed unless agreed to the petitioner.